

### Insurance—Hail Insurance—Taxes.

Section 352 R. C. M. 1921, creating a hail insurance reserve fund, cannot be construed retroactively.

The hail insurance board cannot legally permit an assignment of a 1923 prorated hail insurance loss to be offset against hail insurance premiums due from the assignee to the state for the years 1926 and 1927.

March 7, 1928.

E. K. Bowman, Esq.,  
Chairman, State Board of Hail Insurance,  
Helena, Montana.

My dear Mr. Bowman:

You have referred to me a letter received by you from Mr. John H. Gordon, of Sand Springs, Montana, relative to the adjustment of certain mutual claims between himself and the board of hail insurance.

As I understand the facts, Mr. Gordon holds an assignment of an unpaid balance due on a 1923 prorated loss incurred under a state hail insurance policy in the sum of \$246.00. He owes the state delinquent hail insurance premiums for the years 1926 and 1927 aggregating \$273.73. He desires the board to charge off against his assignment of a 1923 hail insurance loss the amount which he owes for 1926 and 1927 premiums. This is equivalent to paying a 1923 prorated hail insurance loss out of 1926 and 1927 hail insurance tax levies.

Section 352 of the code, and part of the hail insurance law, provides for the maintenance of a reserve fund "a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on warrants, and losses as the same shall be settled and adjusted by the board."

Section 361 provides that if the losses in any year should exceed the current levy plus the reserve fund, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved.

It was not until the year 1925 that the hail insurance board made any provision for the creation of a reserve fund. Prior to that time the losses had been so great that it was not possible for the board to use any portion of the annual levy for the creation of such a reserve.

Such being the case, it is my opinion that no part of the present reserve fund which has been built up by levies made since 1925, can be used for the payment of a 1923 prorated loss. The only funds that can legally be used by the hail insurance board for the payment of 1923 losses are the moneys received from the levies of that year or collections from delinquent levies prior to such year.

It is my opinion that the statute creating the reserve fund can not be construed retroactively and does not authorize the use of the moneys in such reserve for the payment of losses occurring prior to its creation.

It is therefore my opinion that the board can not legally permit Mr. Gordon's assignment of a prorated 1923 loss to be offset against the premiums he owes for the year 1926 and the year 1927.

Very truly yours,  
L. A. FOOT,  
Attorney General.